

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM WISHER,	§	
	§	No. 584, 2005
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. I.D. No. 0402002084
Plaintiff Below,	§	
Appellee.	§	

Submitted: May 10, 2006

Decided: July 17, 2006

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

O R D E R

This 17th day of July, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) William Wisher appeals from his convictions, following a jury trial, of trafficking in cocaine, possession with intent to deliver cocaine and conspiracy second degree. Wisher argues that his accomplice's testimony, which was uncorroborated and inconsistent, was insufficient to sustain the convictions. Alternatively, Wisher argues that the trial court committed plain error by not instructing the jury about the inherent problems in accomplice testimony. We find no merit to either argument, and affirm.

2) On February 2, 2004, an informant told the police that Charles Johnson was a drug dealer. The informant then arranged to buy drugs from Johnson at a Wawa store on North Dupont Highway. Johnson arrived, as scheduled, in a car driven by Wisher. Another passenger, Kelvin Stigars, was sitting in the back seat. After surrounding the car and removing the three men, the police found ziplock bags containing crack cocaine in the back seat. The police also found a scale and marijuana in Johnson's coat, a marijuana blunt in the driver's side door pocket, and \$1431 in Wisher's pants pocket.

3) At trial, Johnson testified that Wisher was his business partner; that Wisher chose the Wawa store as the place to conduct the drug transaction; and that Wisher knew the drugs were in his car. He also explained that, when arrested, he felt responsible for having gotten Wisher and Stigars in trouble, so he took full responsibility for the drugs.

4) Wisher argues that Johnson's testimony, which was the only evidence connecting Wisher to the drug crimes, was so riddled with inconsistencies that the trial court should have removed the case from the jury. For example: 1) Johnson initially told police that the drugs were his and that Wisher was unaware of the planned drug sale, but testified at trial that Wisher knew about the drug sale and selected the location for the transaction; 2) Johnson testified on direct that the scale was in

Wisher's car when he got in, but on cross-examination he said that he brought the scale with him; and 3) Johnson testified at one point that he kept his stash of drugs in an abandoned house near 4th and Washington Streets, but later said that the drugs were on the "north side."

5) In Delaware, a conviction may be based on uncorroborated accomplice testimony.¹ Nonetheless, the trial court may grant "a judgment of acquittal when there is an irreconcilable conflict in the State's case concerning the defendant's guilt."² Here, there was no such irreconcilable conflict. Johnson explained that, at the time of his arrest, he took full responsibility for the drugs in an effort to protect Wisher and Stigars from prosecution. Later, he implicated Wisher both in statements to the police and in his testimony at trial. Johnson did give inconsistent testimony about the scale and the location of the stash, but those inconsistencies did not create an irreconcilable conflict concerning Wisher's knowledge and participation in the drug deal.³ Accordingly, we find no plain error in the trial court's failure to grant a judgment of acquittal *sua sponte*.

¹*Brockenbrough v. State*, 522 A.2d 851, 854 (Del. 1987).

²*Ibid.*

³*Cf. Bland v. State*, 263 A.2d 286 (Del. 1970).

6) Wisher also argues that the trial court committed plain error by failing to instruct the jury about the inherent limitations in accomplice testimony. Under the plain error standard, the error “must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”⁴ We find no plain error. Wisher was able to argue to the jury that Johnson should not be believed because he had made a deal with the State, and that it was in his best interest to inculcate Wisher. While a cautionary instruction would have reinforced that argument, the absence of such an instruction did not deprive Wisher of a fair trial.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴*Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).